

*20*  
SUPREME COURT OF THE UNITED STATES

FEB 24 1942

CHARLES EMMER GROPLEY  
CLERK

OCTOBER TERM, 1941

---

*Done*  
No. 970

---

GREAT SOUTHERN LIFE INSURANCE COMPANY,  
ET AL.,

vs.

JOSEPH LANKSTON WILLIAMS.

---

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT AND BRIEF IN SUP-  
PORT THEREOF.

---

FRED R. SWITZER,

C. C. SMALL,

BINFORD ARNEY,

C. C. SMALL, JR.,

*Counsel for Great Southern  
Life Insurance Company.*

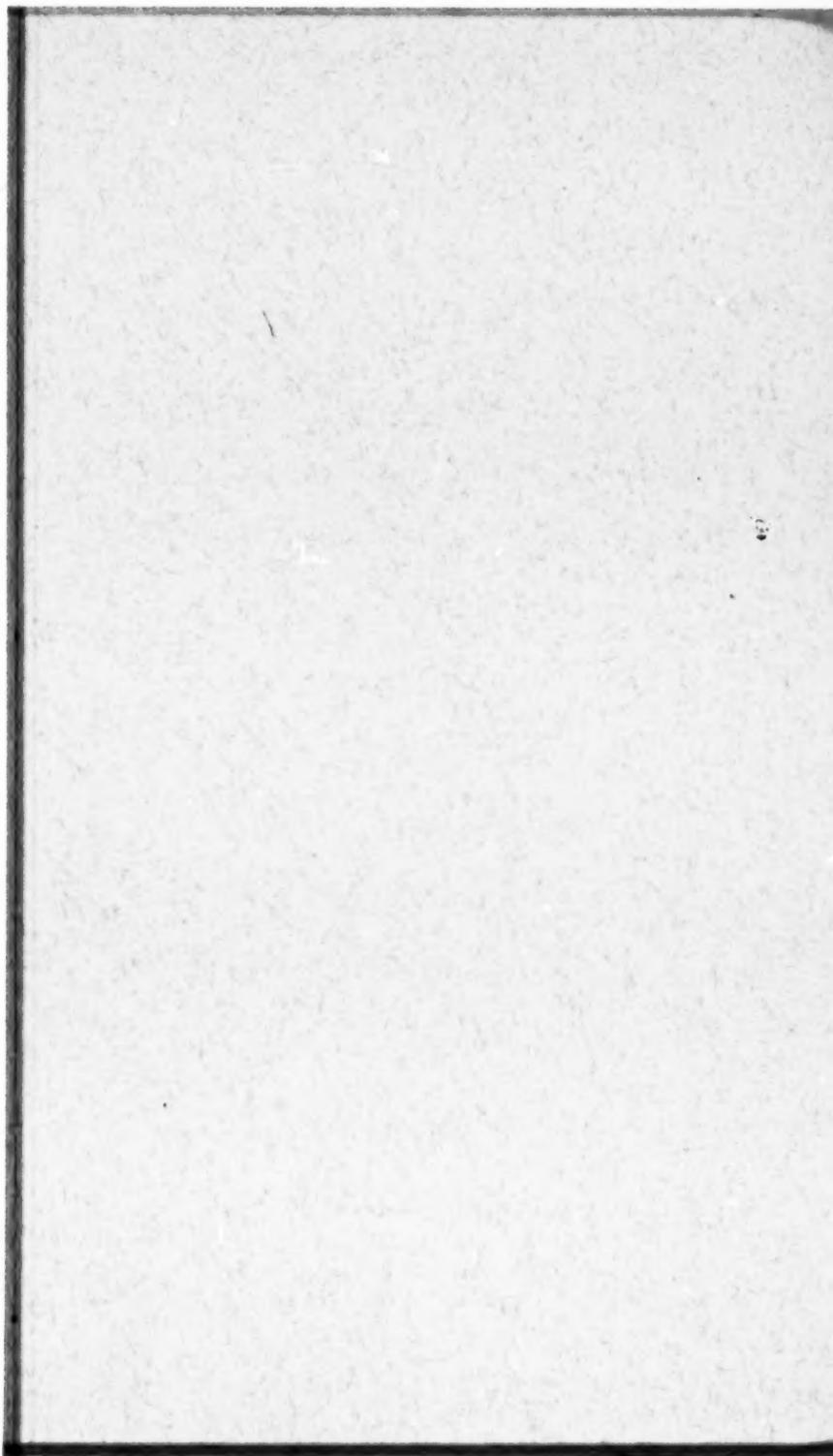
DON EMERY,

RAYBURN L. FOSTER,

E. H. FOSTER,

WARREN M. SPARKS,

*Counsel for Phillips Petroleum Company.*



## INDEX.

### SUBJECT INDEX.

	<i>Page</i>
Petition for writ of certiorari .....	1
Statement of the matter involved .....	2
Basis of jurisdiction .....	3
Questions presented .....	4
Question I .....	4
Question II .....	4
Question III .....	4
Question IV .....	5
Reasons relied on for the allowance of the writ .....	5
Reason I .....	5
Reason II .....	7
Reason III .....	8
Prayer for writ .....	9
Brief in support of petition for writ of certiorari .....	11
Opinion of the court below .....	11
Jurisdiction .....	11
Statement of the case .....	12
Specifications of error .....	12
Argument .....	13
Summary under argument .....	13
Argument under Point A .....	14
Argument under Point B .....	18
Conclusion .....	20

### TABLE OF CASES CITED.

<i>Baxter v. Savings Bank of Utica, N. Y.</i> , 92 F. (2d) 404 (5th C. C. A.) .....	6, 17
<i>In re Davis</i> , 22 Fed. Supp. 12 (N. D. Ia.) .....	7
<i>Dimmitt v. Great Southern Life Insurance Company, et al.</i> , 124 F. (2d) 40 .....	6, 7, 17
<i>First National Bank &amp; Trust Company v. Beach</i> , 301 U. S. 435, 57 Sup. Ct. 801, 81 L. Ed. 1206 .....	11
<i>In re Joyce</i> , 36 Fed. Supp. 113 (N. D. La.) .....	7
<i>In re Olsen</i> , 21 Fed. Supp. 504 (N. D. Ia.) .....	7

<i>Shyvers v. Security First National Bank of Los Angeles</i> , 108 F. (2d) 611 (9th C. C. A.), writ of certiorari denied March 4, 1940; 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015.....	6, 7, 15, 19
<i>Williams v. Great Southern Life Insurance Company, et al.</i> , 124 F. (2d) 38.....	3

## TABLE OF STATUTES CITED.

Bankruptcy Act, Section 75 (r), 11 U. S. C. A., Section 203r.....	2, 3
Judicial Code, Section 240 (a), as amended by the Act of February 13, 1925, ch. 229, Section 1 (43 Stat. 938) (28 U. S. C. A., Section 347).....	11

SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1941

---

**No. 970**

---

GREAT SOUTHERN LIFE INSURANCE COMPANY,  
ET AL.,

*vs.*

JOSEPH LANKSTON WILLIAMS.

---

**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.**

---

*To the Honorable the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

Your petitioners, Great Southern Life Insurance Company, a corporation, organized under the laws of the State of Texas, and Phillips Petroleum Company, a corporation, organized under the laws of the State of Delaware, pray this Court for the issuance of a writ of certiorari to review a final judgment of the United States Circuit Court of Appeals for the Fifth Circuit, entered on the 13th day of December, 1941, reversing a judgment of dismissal of the

United States District Court for the Northern District of Texas and remanding this case to the United States District Court for the Northern District of Texas for further proceedings.

#### **Statement of the Matter Involved.**

The matter involved herein is the construction of the definition of "farmer" as contained in Section 75 (r) of the Bankruptcy Act (11 U. S. C. A. Section 203r) and the determination of whether or not a landlord who receives the principal part of his income from leasing lands to tenants and who performs the usual activities of a landlord is a "farmer" within that definition.

On October 19, 1940, debtor Williams filed in the United States District Court for the Northern District of Texas, Amarillo Division, his petition for composition or extension under Section 75 of the Bankruptcy Act (Tr. 1-21), alleging "That he is personally bona fide engaged primarily in farming operations (and that the principal part of his income is derived from farming operations) as follows: from ranching operations in Hutchinson and Moore Counties, Texas, and *in the rental thereof*, and in farming operations in Potter and Sherman Counties, Texas, and Texas County, Oklahoma, for wheat farming and *in the rental thereof*;" (Tr. 2). On October 21, 1940, the creditors, Great Southern Life Insurance Company and Phillips Petroleum Company, filed a motion to dismiss debtor's proceedings on the ground that Williams was not a "farmer" as defined in Section 75 (r) of the Bankruptcy Act, and that the Court had no jurisdiction of the proceedings (Tr. 21-23).

After a hearing before the Court, the District Court, on February 12, 1941, entered an order finding as a fact that the respondent, Williams, was not a farmer, and dismissing the proceeding (Tr. 24). Respondent, Williams, appealed from this judgment of dismissal to the Honorable Circuit

Court of Appeals for the Fifth Circuit. On December 13, 1941, this Court entered a judgment and rendered an opinion reversing the District Court and remanding the case for further proceedings, on the ground that respondent, Williams, was a farmer and entitled to maintain his proceeding under Section 75 of the Bankruptcy Act (Tr. 195, 191).

#### **Basis of Jurisdiction.**

The judgment sought to be reviewed is the judgment of the United States Circuit Court of Appeals for the Fifth Circuit rendered on the 13th day of December, 1941 (Tr. 195), reversing the judgment of dismissal of the United States District Court for the Northern District of Texas, Amarillo Division, and remanding this case to such Court for further proceedings under Section 75 of the Bankruptcy Act (11 U. S. C. A. Section 203). The nature of the case is set out under the preceding statement of the matter involved, and is one involving the construction of the definition of "farmer" contained in Section 75 (r) of the Bankruptcy Act to determine whether respondent, Williams, as a landlord receiving the principal part of his income from rentals from leases is a "farmer" entitled to the benefits of such Act. The order of dismissal entered by the United States District Court for the Northern District of Texas reflects that such Court found that Williams was not a farmer within the meaning of the definition in Section 75 (r). The opinion of the Fifth Circuit Court of Appeals (Tr. 191) (124 Fed. 2d, 38) reflects the decision of such Court to be that Section 75 (r) should be construed to include as a farmer persons who are engaged in the activities which Williams engaged in as a landlord and who received the principal part of their income from leasing lands to tenants for cash and share rentals. The Petition for Rehearing was filed by the petitioners herein on the 2nd day of January, 1942 (Tr. 196) and was denied on January 12,

1942 (Tr. 212). Petition for Writ of Certiorari is presented herein on the 24th day of February, 1942.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925, c. 229, Section 1 (43 Stat. 938) (28 U. S. C. A. Section 347). *First National Bank & Trust Company v. Beach*, 301 U. S. 435, 57 S. Ct. 801, 81 L. Ed. 1206.

#### Questions Presented.

##### I.

Is a landlord who has no control or supervision over his tenants and whose only activities in relation to his lands consist of leasing the same under oral and written leases to third persons for cash and grain rentals, and performing the usual activities of a landlord, a "farmer" within the definition enumerated in Section 75 (r) of the Bankruptcy Act (11 U. S. C. A. Section 203) ?

##### II.

Is a landlord who receives the principal part of his income from leasing lands to tenants for a consideration of cash rent and grain rent a "farmer" under the second portion of the definition enumerated in Section 75 (r) of the Bankruptcy Act, as one "the principal part of whose income is derived from any one or more of the foregoing operations"?

##### III.

Is a landlord sixty-eight years of age who maintains a residence and office in Amarillo, Potter County, Texas, who up to recent years managed properties for estates and individuals, procured right-of-way for the Rock Island Railroad, bought and sold lands on commission, who own on livestock of any description and no farming implements or implements of husbandry, but who owns an interest in a ranch of 8,156 acres in Hutchinson and Moore Counties,

Texas, which is leased for cash rent to a tenant and who owns three farms, in Potter County, Texas, Sherman County, Texas, and Texas County, Oklahoma, which are leased to tenants for a rental of one-third of the crops harvested delivered free of cost at the elevator, and who visits his lands to see that he receives his crop rent, and who discusses conditions of erosion with his tenants, and who in one isolated instance in 1940 hired third parties to combine some wheat that was left uncut by a tenant who breached the rental contract and abandoned the premises, and who in 1938 in one isolated instance leased land to a tenant and under the terms of said lease furnished seed and fuel for a one-half interest in the crops, and who in one instance in the past five years scattered by the handful some grasshopper poison, an "individual who is primarily bona fide personally engaged in producing products of the soil" or the receipt of the rentals that accrue under the leases on his lands makes him one "the principal part of whose income is derived from" being "primarily bona fide personally engaged in producing products of the soil", within the compass of the definition of farmer contained in Section 75 (r) of the Bankruptcy Act?

#### IV.

Do the personal farming activities of a tenant constitute by themselves the personal engagement in such activities by the tenant's landlord to qualify the landlord as a "farmer" within the definition of Section 75 (r) of the Bankruptcy Act?

##### **Reasons Relied On for the Allowance of the Writ.**

Reason I is germane to Questions Nos. I, III and IV.

##### **REASON I.**

The judgment and decision of the Circuit Court of Appeals herein to the effect that a landlord who leases all of

his farm properties for cash and grain rentals, and who does the usual things done by a landlord in looking after his property and collecting his rentals and who has no other gainful occupation is primarily bona fide personally engaged in one or more of the farming activities enumerated in Section 75 (r) of the Bankruptcy Act, conflicts with a prior decision (hereinafter cited) of another Circuit Court of Appeals and with prior and contemporaneous decisions (hereinafter cited) of the Circuit Court of Appeals for the Fifth Circuit. The decision and holding of the Circuit Court of Appeals in this case is in conflict with the holding and decision of the Ninth Circuit Court of Appeals in the case of *Shyvers v. Security First National Bank of Los Angeles*, 108 F. (2d) 611 (9th C. C. A.) Writ of Certiorari denied March 4, 1940; 309 U. S. 668. 60 Sup. Ct. 608, 84 L. Ed. 1015, in that the *Shyvers* case holds that a landlord who leases her farm properties to tenants through an agent who collects the rentals is not bona fide primarily personally engaged in any of the farming activities enumerated in the definition. The holding also conflicts with the prior holding of the United States District Court in the case of *In Re Olson*, 21 Fed. Supp. 505 (N. D. Ia.). The decision in this case is in conflict with the prior decision of the Fifth Circuit Court of Appeals in the case of *Baxter v. Savings Bank of Utica, N. Y.*, 92 F. (2d) 404 (5th C. C. A.), which holds that a landlord who is engaged in the management of properties, including the superintendence of the farming operations of farm properties, is engaged in the occupation of "property management" and is not bona fide primarily personally engaged in any of the farming operations enumerated in the definition of "farmer" in Section 75 (r) of the Bankruptcy Act. The decision in this case is in conflict with the contemporaneous decision of the Fifth Circuit Court of Appeals in the case of *Dimmitt v. Great*

*Southern Life Insurance Company, et al.*, 124 F. (2d) 40, rendered on the same day, which holds that a landlord who leases his land for a cash rental and whose activities involved the receipt of rentals after the payment of repairs and upkeep, and who has no other occupation, is not primarily bona fide personally engaged in "farming" and is not a farmer within the meaning of Section 75 (r) of the Bankruptcy Act.

#### REASON II.

Reason II is germane to Question No. II.

The judgment and decision of the Circuit Court of Appeals herein to the effect that the receipt of the principal part of his income from leasing farm properties to tenants for cash and grain rentals by respondent, Williams, constituted him a farmer within the meaning of Section 75 (r) of the Bankruptcy Act, is in conflict with the prior decision of the Circuit Court of Appeals for the Ninth Circuit Court in the case of *Shyvers v. Security First National Bank of Los Angeles*, 108 F. (2d) 611 (9th C. C. A.). Writ of Certiorari denied March 4, 1940; 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015. The Ninth Circuit Court of Appeals in the *Shyvers* case held that a landlord who received the principal part of her income from the rental of farm properties was not one, "the principal part of whose income is derived from any one or more of the foregoing operations" to constitute her a "farmer" within that portion of the definition of "farmer" in Section 75 (r) of the Bankruptcy Act. The decision is also in conflict with the following decisions of the United States District Courts: *In Re Olson*, 21 Fed. Supp. 504 (N. D. Ia.); *In Re Joyce*, 36 Fed. Supp., 113 (N. D. La.); *In Re Davis*, 22 Fed. Supp. 12 (N. D. Ia.).

## REASON III.

Reason III is germane to Questions Nos. I to IV, both inclusive.

The Honorable Circuit Court of Appeals has decided an important question of Federal Law involving the construction of Section 75 (r) of the Bankruptcy Act and extending the definition of "farmer" and the benefits of Section 75 to that large class of individuals who as landlords lease their lands to tenants for a consideration of a percentage of the crops produced by the tenant, affecting creditors of such individuals, which important question has not been, but should be, settled by the Supreme Court. The importance of the question is apparent from the large number of individuals affected by the decision who are not, in common parlance or in fact, deemed to be farmers at all, and from the social and economic implications involved in extending the benefits of the Act to individuals who own no livestock or farm implements of any description, who are not themselves engaged in producing products of the soil, and whose activities in relation to their land investments are limited to leasing the same to tenants for a consideration of a percentage interest in crops produced by the tenants.

The decision also presents the subsidiary questions as to what rentals are to be embraced within the definition of the term "farmer" and what activities on the part of the landlord in protecting his reversionary interests in the land and in collecting his percentage interest in the crops produced by the tenants are necessary to qualify him as a "farmer" under the applicable definition. These subsidiary questions also arise by virtue of the decision in the contemporaneous *Dimmitt* case, wherein it was held that a landlord who leased his land for cash rent is not a farmer under the definition contained in Section 75 (r).

The court in this case did not base its decision on the ground that the principal part of the income of the debtor was from cash and crop rentals of his lands, although it found such to be a fact. If such fact is material under the second portion of the definition which provides, "or the principal part of whose income is derived from any one or more of the foregoing operations", then an important question is presented involving the construction of the above quoted portion of the definition. Again the importance is apparent, not only because of the conflict of the holding of this case with the holding of the *Shyvers* case, but because of the large class of debtors and creditors affected.

It is of the utmost importance that the status of landlords be definitely settled by the Supreme Court in order that the bar, the Courts, and the individual debtors and creditors may know the status of such class under the Frazier-Lemke Emergency Act, thus preventing intolerable confusion which inevitably results from the decision in question, the decision in the *Dimmitt* case, and the conflicting decisions hereinbefore mentioned.

#### **Prayer for Writ.**

Wherefore, your petitioners pray that a Writ of Certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals, Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of said United States Circuit Court of Appeals, Fifth Circuit, had in the case numbered and entitled on its docket, No. 9894, Joseph Lankston Williams, Debtor, Appellant, vs. Great Southern Life Insurance Company, et al., Appellees, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and to the end that an important

question of Federal Law, involving the construction of a Federal Statute relating to the determination of whether the class of individuals ordinarily known as landlords are entitled to the benefits accorded to "farmers" under Section 75 of the Bankruptcy Act, and that an end be put to the conflict in the decisions of the various Circuit Courts of Appeal and inferior courts; and that the judgment herein of the United States Circuit Court of Appeals, Fifth Circuit, be reversed by the Court, and the judgment of the United States District Court, Northern District of Texas, Amarillo Division, be affirmed by the Court, and for such further relief as to this Court may seem proper.

Dated, February 24, 1942.

FRED R. SWITZER,  
*Houston, Texas;*

C. C. SMALL,  
BINFORD ARNEY,  
C. C. SMALL, JR.,  
*Austin, Texas;*

*Attorneys for Great Southern  
Life Insurance Company.*

BINFORD ARNEY,  
*Of Counsel for Great Southern  
Life Insurance Company.*

*Address: Tribune Building, Austin, Texas.*

DON EMERY,  
RAYBURN L. FOSTER,  
*Bartlesville, Oklahoma;*  
E. H. FOSTER,  
WARREN M. SPARKS,  
*Amarillo, Texas;*

*Attorneys for Phillips Petroleum Company.*

WARREN M. SPARKS,  
*Of Counsel for Phillips Petroleum Company.*  
*Address: Rule Building, Amarillo, Texas.*

